

IN THE INDUSTRIAL COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 237/99

In the matter between:

NICHOLAS DLAMINI

APPLICANT

and

SWAZILAND ELECTRIC CENTRE

AND UTILITIES (PTY) LTD

RESPONDENT

CORAM:

NDERI NDUMA:

PRESIDENT

JOSIAH YENDE:

MEMBER

NICHOLAS MANANA:

MEMBER

FOR THE APPLICANT:

MR. T. BERTRAM

FOR THE RESPONDENT:

MR. D.S. MADAU

JUDGEMENT

22.06. 2000

The Applicant seeks maximum compensation for unfair dismissal. He claims that the dismissal was substantively and procedurally unfair in that the Respondent failed to observe a fair retrenchment procedure before dismissing him.

The Applicant's case in brief is that he was employed on the 10th July 1998 by Mrs. Carmichael the Director of the Respondent as a sales person for electrical equipment over the counter.

He had been persuaded by his friend, Comfort Temba who worked for the Respondent to apply for the post.

Upon being interviewed by Mrs Carmichael, he was recruited and placed on a 3 months probation. The Applicant's salary was E950.00 per month.

On the 28th December 1998, the Applicant was retrenched by Mrs Carmichael. The Applicant told the court that the termination took him by surprise as he had not been forewarned of any intention to lay him off.

2

Upon termination he was paid one month salary in lieu of notice, leave pay and salary for days worked.

The Applicant said that at the electric centre they were four (4) sales persons but he was the only one retrenched. He added that he was the last to be employed out of the four of them.

On the 20th March 1999 he was re-employed by Mormond Electrical and he remains there todate earning a salary of E1,010 per month.

He said he would not have left Mormond in the first place had the Respondent not enticed him to do so with an offer of a better salary.

According to the Applicant, there was no reason to retrench him as the company was doing well and he was replaced upon retrenchment.

Under cross examination the Applicant was referred to a letter signed by him in full and final settlement of all monies due to him from the Respondent. He said that he understood the implication of the letter when he signed it. He had received E1 839.60 in respect thereof.

The Applicant insisted that during his six (6) months service period with the Respondent, he did not discuss the issue of retrenchment at all with the Respondent. He said that he spoke to Mrs Carmichael regularly concerning his work only and nothing else. He insisted that he became aware of the retrenchment when he only got the letter dated 28th December 1998.

Mrs Carmichael testified for the Respondent, She was the Managing Director of the company. She had interviewed the Applicant and recruited him in July, 1998. The Applicant told her during the interview that he intended to leave Mormond Electrical because he was unhappy.

She told the court that prior to the retrenchment of the Applicant, she had on many occasions consulted with the staff concerning the possible retrenchment due to poor financial performance of the Respondent. The Applicant was present in the meetings where the issue was discussed.

She explained that the month of December 1998 was financially critical for the Respondent. She had to make a decision to reduce the staff compliment by two (2) to enable the Respondent to survive. As a result thereof, the Applicant and one driver by the name of Nash were retrenched.

3

The Applicant according to the witness was happy with the settlement package upon retrenchment and he happily signed the letter of settlement in her presence.

She further told the court that she was summoned to appear at the Labour Commissioner's office on the 12th February, 1999 for a reconciliation meeting at 9.00 o'clock. The Applicant came late and explained that Mormond Electrical could not release him earlier.

She therefore insisted that the Applicant was not re-employed by Mormond Electrical in March but this had happened in early February. The implication of this evidence is that the Applicant only remained unemployed for a period of one month after the retrenchment.

She denied that she had hired a replacement for the Applicant and stated that out of a staff compliment of 13 she eventually retained only nine (9) workers. She retrenched two of them and others resigned due to the bad financial position of the company.

Mrs Carmichael's evidence was not seriously challenged by counsel for the Applicant especially on the aspect of consultation meetings held at the work place to inform the employees of the impending retrenchment due to financial constraints.

Upon due consideration of the facts of the case, we have arrived at the conclusion that the Respondent was in financial hardship in 1998. That retrenchment was one of the ways of alleviating that problem. That the Applicant was the last to be employed by the Respondent out of the sales persons employed and therefore was properly targeted for termination.

That even though there was no adequate notice of termination, one month payment in lieu of notice satisfied the requirements thereof. He was paid for leave days due to him and all other monies he was

owed by the Respondent.

We do accept Mrs. Carmichael's evidence that the Applicant signed the Agreement dated 28th December, 1998 freely and voluntarily in full and final settlement of all monies due to him.

Decision to retrench is entirely the domain of the employer provided that the employer should in good time inform the targeted employees to prepare themselves for the ordeal. Adequate notice should be given and the employees should in the period of the notice be allowed time to seek alternative employment. In appropriate cases, counselling should be afforded the potential retrenchees. We find it difficult to accept the Applicant's evidence that retrenchment was not discussed at all in the various staff meetings convened by the Respondent in view of the financial difficulties the company was undergoing.

4

In the final analysis, the Respondent has in terms of Section 42 (2) (a) and (b) shown that the decision to retrench was lawful, inevitable and reasonable in all the circumstances of the case.

The Applicant's Application is dismissed with no order as to costs.

The Members Agree.

NDERI NDUMA

JUDGE PRESIDENT - INDUSTRIAL COURT